

CABINET

10 JUNE 2009

Present :- Councillor Anne Turrell (Chairman)
Councillors Lyn Barton, Tina Dopson, Martin Hunt,
Nigel Offen, Beverley Oxford, Paul Smith and
Tim Young

Also in Attendance :- Councillor Kevin Bentley
Councillor Christopher Arnold
Councillor Elizabeth Blundell
Councillor Peter Chillingworth
Councillor Beverly Davies
Councillor Wyn Foster
Councillor Pauline Hazell
Councillor Dave Harris
Councillor Sue Lissimore
Councillor Gerard Oxford
Councillor Dennis Willetts

3. Minutes

The minutes of the meeting held on 18 March 2009 were confirmed as a correct record.

4. Have Your Say!

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He contested an assertion made in correspondence he had recently received from the Leader of the Council that the decent homes contract had been subject to rigorous public scrutiny. There had been no public inquiry into the decent homes contract and he believed that the public were still being kept in the dark. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, indicated that a written response would be sent.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Cabinet. At its meeting on 6 April 2009 the Finance and Audit Scrutiny Panel had made a recommendation to Cabinet that it reconsider the procedures for putting information relating to budget and other financial changes into the public domain. The recommendation had cross party support. He sought confirmation as to when this would be considered by Cabinet. Councillor Turrell indicated that this recommendation would be considered at the meeting of the Cabinet on 13 July 2009, when it was due to consider an

item on the budget strategy and timetable.

5. Call-in Procedure// Extension of Free Bulky Waste Special Collections

The Head of Street Services submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix A to these minutes in the Minute Book together with the extract of the minutes of the Finance and Audit Scrutiny Panel meeting of 19 May 2009.

Councillor Harris attended and, with the consent of the Chairman, addressed the Cabinet in support of the proposal that the Portfolio Holder decision be confirmed. This would be one more step towards making Colchester cleaner and greener and the delay in confirming the decision meant delay in addressing the problem of fly tipping. He stressed the need to ensure the extension of the scheme was properly promoted and he would be willing to see it extended further.

Councillor Arnold attended and, with the consent of the Chairman, addressed the Cabinet. He had called the portfolio holder decision in and presented the call-in at the meeting of the Finance and Audit Scrutiny Panel. He had done so because he did not believe the case for the decision had been sufficiently made. The original decision seemed to reverting back to the idea of deprived wards, whilst the Council now had much more detailed information to base its decisions on. However, with the further detail now provided, he was satisfied that the case was now made and was content for the decision to be implemented.

Councillor T. Young, Portfolio Holder for Street and Waste Services, made a presentation to the Cabinet and explained the extension of the scheme and the reasons why it was being extended to particular areas. He thanked officers for the work put in to improve the scheme and to further explain the decision. He believed that although the call-in had delayed the implementation of the decision slightly, it had added value to the process.

RESOLVED that Portfolio Holder decision STS-007-08 entitled “Extension of Free Bulky Special Collections” be confirmed.

REASONS

The original decision by the Portfolio Holder for Street and Waste Services was ‘called in’ and the Finance and Audit Scrutiny Panel (FASP) at their meeting on 19th May 2009 agreed to refer the decision back to the Portfolio

Holder for Street and Waste Services for further consideration, asking him to extend the special collection scheme not on a ward basis, but to those super output areas having the greatest need regardless of ward.

The Panel also asked the Portfolio Holder to agree to a further review of the Free Freighter Service in 2009-10 and requested information in regards to car ownership by ward, the number of flytipping collections by ward with this information split by collections on private and public land.

The Head of Street Service's report built on the information provided with the original report, and included the information provided at the FASP meeting on 19th May 2009. The Portfolio Holder had also subsequently asked that the locations of the Summer Freighter service be reviewed when the area receiving the extension of the free bulky waste special collections scheme were agreed.

ALTERNATIVE OPTIONS

The existing scheme could be retained or the scheme could be extended beyond that proposed. However, the latter would significantly reduce the number of collections available and lessen the effectiveness of the scheme because of the distances the freighter would have to travel on the morning it was operated. The scheme could be extended further if it was decided to provide further funding to increase capacity by allocating extra staff resources.

6. Sale of Materials

The Head of Street Services submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix B to these minutes in the Minute Book.

Paula Whitney addressed the Cabinet pursuant to the provisions of provisions of Meetings General Procedure Rule 5(2.) She considered that this was a very important report which confirmed that separated recyclables were more valuable than co-mingled recyclable material. In particular she drew attention to the graphs at appendix two of the Head of Street Services report. WRAP had recently reiterated their findings in June 2008 which had shown that separated kerbside collection was cheaper than co-mingled collection and also resulted in better quality product with a higher value.

Councillor T. Young, Portfolio Holder for Street and Waste Services, thanked Paula Whitney for her comments, which would taken on board by the Waste Prevention and Recycling Options Appraisal Task and Finish Group. In

response to debate by the Cabinet, Councillor T. Young confirmed that appropriate break clauses would be put in the contracts and that the contracts would not compromise the work of the Task and Finish Group in any way.

RESOLVED that Contract Procedure Rule 9(4) be invoked and a two year contract for the sale of recyclable materials be awarded to Berrymans and James Heys and Sons Ltd.

REASONS

There were currently no formal documented contracts for the sale of recycled materials although there were agreements in place with various contractors as detailed below. In summary the current arrangements for the collected materials were:

- Mixed Glass: bring sites emptied by Berrymans
- Mixed Glass: collected at kerbside and taken to Shrub End Depot before being delivered to Berrymans at Thurrock or Dagenham
- Mixed Cans: collected and taken to Shrub End Depot before being delivered loose by CBC to James Heys and Sons, Canvey Island
- Mixed Cans: bring sites serviced by CBC and delivered to Shrub End Depot before being delivered loose by CBC to James Heys and Sons, Canvey Island
- Mixed Paper and Cardboard: baled without sorting by CBC and collected from Shrub End Depot by James Heys and Sons, Canvey Island
- Mixed Plastics: baled by CBC and collected from Shrub End Depot by James Heys and Sons, Canvey Island

A report to Finance and Audit Scrutiny Panel on 24 February 2009 detailed the current arrangements and clarified the price paid to the Council for the various items it collected for recycling. This was attached as Appendix One to the Head of Street Services report for information.

It was recommended by members of the Finance and Audit Scrutiny Panel that contracts be entered into as soon as possible in order to ensure compliance with procurement requirements. It was also requested by the Panel that investigations be conducted looking at comparisons with other Councils. Details of investigation into comparisons were at section 4 of the Head of Street Services report, although it was difficult to identify Councils with comparable collection and disposal methods to Colchester.

It was acknowledged that these contracts had been in place for a number of years. It was therefore in the Council's best interests that agreements should be drawn up and signed by the Authority and the sub-contractors for the provision of these services.

ALTERNATIVE OPTIONS

Alternative options were listed in the report to Finance and Audit Scrutiny Panel on 24 February 2009. However, a Task and Finish Group had been set up looking at the options available to the Council in terms of how the Council recycled, collected, marketed and sold the Council's waste in the future. It was anticipated that this group would make recommendations on the processing and sale of recyclable materials beyond the point of these proposed contracts. It was felt that it was in the best interests of the Council at this stage to formalise the current arrangements with a clear clauses covering termination and review.

Councillor Kevin Bentley (in respect of his membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Tim Young (in respect of his spouse being a member of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Lyn Barton and Councillor Anne Turrell (in respect of their membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

7. Visual Arts Facility: Associated Issues

The Executive Director (Ian Vipond) submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix C to these minutes in the Minute Book.

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He did not believe that changing contractors would rescue the construction of this badly designed building. He noted the contents of correspondence he had recently received from the Leader of the Council about the VAF. He considered that the independence of the District Audit was an irrelevance. The key issue was that he did not spot problems with the accounts or satisfactorily deal with queries raised about them.

Councillor Bentley attended and, with the consent of the Chairman, addressed the Cabinet to offer his support to the administration with the completion of the VAF. He considered that this was too important an issue to play politics with. It was vital that the building was completed and opened as soon as possible.

As well as the cultural and educational benefits the VAF would bring, it would help promote Colchester nationally and internationally. He considered that throughout the project, the VAF had not been promoted well enough and the Conservative group would support efforts to do this.

Councillor Hunt, Portfolio for Communication, Customers and Leisure, introduced the report and explained the decisions outlined the Executive Director's report. He believed that the building would still be completed with the budget allocated and with only a slightly extended timetable. Councillor Smith, Portfolio Holder for Culture and Diversity, paid tribute to the work of Councillor Hunt in relation to this project and stressed his determination to ensure that the project was delivered at no extra cost. He drew a comparison with the Millennium Bridge, which had a troubled construction and opening but was now regarded as an iconic landmark.

RESOLVED that:-

(a) It be noted that the Contract with Banner Holdings Limited (BHL) was determined based on the advice of external professional advisers.

(b) It be noted that Turner and Townsend Project Management Limited (TTPM) and Turner and Townsend Cost Management Limited (TTCM) were providing post determination services to the Council following the determination (ending) of the Council's contract with BHL and that once those services had been completed the contractual arrangements with TTPM and TTCM would be at an end.

(c) The continued retention of Anthony Collins Solicitors (ACS) in respect of any legal proceedings issued and/or brought by third parties in relation to the Visual Arts Facility be approved and an exception under Contract Procedure Rule 2(2) from the need to seek further competition under Contract Procedure Rule 6(2) be authorised for the reasons set out in paragraph 4 of the Executive Director's report.

(d) MACE Ltd be appointed in accordance with paragraph 5 of the Executive Director's report and an exception under Contract Procedure Rule 2(2) from the need to seek competition under Contract Procedure Rule 6(2) be authorised for the reasons set out in the Executive Director's report.

REASONS

The reasons for the decisions were as set out in the Executive Director's report.

ALTERNATIVE OPTIONS

An alternative option would be not to appoint ACS to provide ongoing advice and support and/or to limit the amount of advice and/or support provided. However, this was a specialised area of work and all the issues were very interrelated. This approach would also create further project risks and potential liabilities and would result in less certainty and confidence from the Council and its funding partners to move the project forward. The Council would also risk the potential to make claims under the bond and/or other insurance policies. If BHL, or other parties, issued proceedings against the Council then in that event the Council would have no choice but to defend those proceedings and/or to counterclaim in any event.

The Council could choose not to appoint MACE Ltd under the framework agreement and to carry out a full EC compliant tender process. However, this alternative was likely to create further delays to the programme and professional costs could potentially increase.

Councillor Tim Young (in respect of his spouse being a member of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Lyn Barton and Councillor Anne Turrell (in respect of their membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

8. New Build Nuclear Power Station at Bradwell

Minute no. 62 of the Strategic Overview and Scrutiny Panel was submitted together with the report of to the Strategic Overview and Scrutiny Panel of the Task and Finish Group on the New Build Nuclear Power Station at Bradwell.

Ian Newton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He expressed concern about the impact of a nuclear power station on the marine environment. He stressed the huge amounts of sea water used by the old power station and the impact this had on marine life. Any new reactor would be likely to use even greater quantities of water with a greater resultant impact on the estuary. In addition, Bradwell was the only nuclear power station located on an estuary, rather than facing the open sea. This meant that water used by the power station and discharges from the power station were not washed out to sea, but remained within the estuary. It took approximately ten tides for discharges from the power station to dissipate. He also expressed concern about the disposal of the covers of old fuel roads.

Paula Whitney addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2) about the issue of need for nuclear power stations. She considered that the Government leaflet entitled “Have Your Say” was somewhat misleading. The figures it contained needed to be put into context Nuclear energy produced only 3% of total energy and the loss of this could be offset by measures such as greater energy efficiency.

Councillor Arnold attended and, with the consent of the chairman, addressed the Cabinet in his capacity as Chairman of the Strategic Overview and Scrutiny Panel and the New Build Nuclear Power Station at Bradwell Task and Finish Group. He stressed that the group had concentrated on issues specific to Bradwell and steered away from the wider debate about nuclear power. The aim of the Task and Finish Group was to ensure the Council was as well prepared as possible for any planning application for a new nuclear power station at Bradwell. He outlined the proposals made by the Task and Finish Group. He considered that there was also a need to look at issues relating to the evacuation of Mersea, but this went beyond the scope of the work of the Task and Finish Group. He also noted that it was proposed in the report on Appointments to Outside Bodies not to appoint to the Colne Estuary Member Liaison Group and suggested this needed to be reconsidered in view of the evidence that this group was being revamped.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, and Councillor Barton, Portfolio Holder for Planning, Regeneration and Sustainability, welcomed the recommendations made and thanked the Task and Finish Group for the excellent work it had undertaken. It was clear that further work needed to be undertaken and the proposals for an internal Working Group and a partnership with neighbouring authorities to manage this work were sensible.

RESOLVED that:-

(a) An internal Bradwell Liaison Working Group be formed to consider all the issues and proposals for the Bradwell site as they develop. There remained important pieces of investigative work that could not be finished within the time and resources allotted to the task and finish group which should form part of the work of this group, including;

- The examination of future flooding and sea defences in relation to climate change and any new build station at Bradwell, and consideration to such documents as the Shoreline Management Plan for Essex;
- To get a more informative view of the chlorination process of any new build station and what this would mean for the eco system of the estuary and the livelihoods of local fisherman;

- The issue of hot water dispersed to the estuary: “thermal plumes”.

(b) Essex County Council be requested to consider the formation of the Essex Nuclear Energy Group, comprising Essex County Council, Maldon District Council and Colchester Borough Council and other leading key organisations for the purpose of meeting informally to discuss any proposals put forward for the Bradwell site and to consider the strategic issues and benefits of such a proposal, and be in a position of ensuring thorough and effective consultation with local people, businesses and key organisations.

(c) NHS North East Essex be requested to determine the validity of the information submitted by Mr. Urquhart in reference to the new registered cases (by age group) of malignant neoplasms, and the suggestion of discrepancies in respect of the data from the Essex Shared Services Agency (part of NHS PCT) and the North Thames Cancer Registry, and to give reassurances that any change to the data base material is reflected in any future conclusions made by COMARE.

(d) The Cabinet, in the likely event of a planning application for a new build be forthcoming, would respond to the new Infrastructure Planning Commission (IPC) on planning consultation processes, and furthermore, that the Council would consider the design and scale of any new build, what must be done to mitigate against the potential obtrusiveness of the structure to the residents of West Mersea and the surrounding area, and respond accordingly.

(e) That assurances be sought from the Government that the site owner / energy company would be required to commission independent intensive field studies of the Bradwell estuary to the end of the productive life of any new build nuclear power station.

(f) That assurances be sought from the Government that as part of the planning process (Infrastructure Planning Commission) it should be a requirement of the energy company / site operator to produce a strategy for engaging with the local population (for the Bradwell site, to include Mersea Island and the surrounding area), using every medium of communication to provide information on the current and future operation, risks and developments of the operating site(s).

(g) The Health and Safety Executive / National Emergency Planning Liaison Group (Part of the Government Department of Business, Enterprise and Regulatory Reform) be requested to consider a new DEPZ (Detailed Emergency Planning Zone) beyond the current 2.4 km, for all new and more powerful nuclear power reactors/stations, and also to consider whether the DEPZ, graphically shown as concentric circles around the Bradwell site, could differ given that, as the Group believes, the emergency planning zones for the

Control of Major Accident Hazards (COMAH) are egg shaped. If either the distance or shape of the DEPZ was changed it was acknowledged that Mersea island would almost certainly fall within the DEPZ, and the difficulty of evacuating the island would become an issue that would require addressing, having the potential to make the site considered unsuitable.

REASONS

The reasons were as set out in the report of the Task and Finish Group to the Strategic Overview and Scrutiny Panel.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet. However, it was open to the Cabinet not to accept the recommendations of the Strategic Overview and Scrutiny Panel or to only accept some of the recommendations.

9. Section 5A report under the Local Government and Housing Act 1989 in relation to the decision to cease revenue funding to Shopmobility

The Monitoring Officer submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix D to these minutes in the Minute Book.

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He expressed sympathy to the Council for the position it found itself in. The Council had undertaken the necessary checks on the impact of the decision. The error had been minor and the Council had been hounded unfairly as a result. He enquired as to the total subsidy Shopmobility received from the Council, including the value of lease of properties.

Councillor Blundell attended and, with the consent of the Chairman, addressed the Cabinet to express her dismay that the Portfolio Holder for Performance and Partnerships had taken a decision that was unlawful and that as a consequence the Council had been faced with a threat of judicial review. As a consequence, a number of voluntary welfare organisations were in limbo as they waited for confirmation of their funding. These organisation provided services to the most vulnerable sectors of the community. She believed that the Portfolio Holder for Performance and Partnerships should consider her position.

The Monitoring Officer introduced his report and explained his conclusions. It was important that these events be considered in the context of the complex

and ever-changing raft of legislation that regulated local government. The incident had highlighted a need for training for both officer and members regarding the Council's duty under the Disability Discrimination Act 1995. This could also tie in with training about the provisions of the Equalities Bill which was currently before Parliament. The Chief Executive also stressed that it was incumbent on officers to provide proper advice and the need for training was noted.

Councillor Dopson, Portfolio Holder for Performance and Partnership, expressed her regret about the unlawful nature of the decision and the consequences that these had for a number of people. She had relied on the advice of officers. The decision had been rightly challenged and this had ensured that the Council embedded processes to comply with the Disability Discrimination Act. An extensive consultation was now underway and a fresh decision on investment in voluntary organisations would be taken once the consultation was complete.

Councillor Smith, Portfolio Holder for Culture and Diversity, and Councillor T. Young, Portfolio Holder for Street and Waste Services, expressed their support for Councillor Dopson and stressed that this was an honest mistake. The administration would admit when mistakes were made.

RESOLVED that:-

- (a) The content of the Monitoring Officer's report be noted.
- (b) The Portfolio Holder for Performance and Partnerships reconsider her report published on 3 April 2009 "Allocation of investment in voluntary welfare organisations 2009-10" in accordance with the Monitoring Officer's conclusions
- (c) All future reports which potentially affect disabled persons must demonstrate that the Council had given due regard to the general duty under the Disability Discrimination Act 1995 and are accompanied by an Equality Impact Assessment.
- (d) The Council's Equality and Diversity Officer carry out awareness training for both Members and Officers covering the Disability Discrimination Act 1995 general duty.

REASONS

The Cabinet was obliged to consider this report in accordance with the Local Government and Housing Act 1989 where the Monitoring Officer was aware that the Council was acting or had acted unlawfully.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.

10. Appointments to External Organisations and Council Groups

This item was deferred until the meeting on 13 July 2009 to allow for further consultation.

11. Progress of Responses to the Public

The Head of Corporate Management submitted a progress sheet a copy of which had been circulated to each Member and a copy of which appears as Appendix E to these minutes in the Minute Book.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, explained that the outstanding replies had now been sent.

RESOLVED that the contents of the Progress Sheet be noted.

REASONS

The progress sheet was a mechanism by which the Cabinet could ensure that public statements and questions were responded to appropriately and promptly.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.

The Cabinet/Panel resolved under Section 100A(4) of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

12. Disposal of Angel Court

The Executive Director submitted reports copies of which had been circulated to each Member and a copy of which appears as Appendices F and G to

these minutes in the Minute Book.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Cabinet. He expressed concern that this was not a good time to sell and considered that Angel Court should have been marketed sooner. Concern was also expressed that given the financial pressures, the Council would seek to maximize the capital from the sale and would compromise on the space needed for the Customer Service Centre.

Councilor Hunt, Portfolio Holder for Communication, Customers and Leisure, stressed that the Customer Service Centre and Infopoint@colchester would be based at Angel Court under the terms of the purchase. A review of the Customer Service Centre would shortly be undertaken with a view to improving the service and possibly increasing the size of the centre. Councillor Offen, Portfolio Holder for Resources and Business confirmed that the purchaser was content to lease back as much space as the Council required.

RESOLVED that the Portfolio Holder for Resources and Business and Executive Director to progress and complete the sale of Angel Court.

REASONS

As flexible working was implemented, Angel Court would be surplus to office accommodation requirements.

ALTERNATIVE OPTIONS

(a) While the impression may be that it was not a good time to be marketing any site, the offers received were of a high enough value to make the sale attractive. The sale could have been delayed in order to wait for the property market to improve, however the timescales for this were unpredictable and in the meantime the Council would continue to have significant revenue costs for the building.

(b) The building could be retained, and while there were some opportunities for alternative use these would require a capital investment and were unlikely to deliver a significant enough payback for the timescale the Council would want to retain the building for.